



Federal Communications Commission
Washington, D.C. 20554

May 06, 2005

DA 05-1306
In Reply Refer to:
1800B3-CLR

MBC Grand Broadcasting, Inc.
c/o J. Geoffrey Bentley, Esq.
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Leggett Broadcasting, Inc.
c/o Mr. Brad Leggett
2808 North Avenue
Grand Junction, CO 81501

Western Slope Communications, LLC
c/o Tom W. Davidson, Esq.
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1333 New Hampshire Avenue, NW
Washington, DC 20036

Re: KSTR-FM, Montrose, CO
Facility ID No. 21629
File No. BALH-20040715ABL
Application for Assignment of License

Gentlemen:

We have before us the above-captioned application (the "Application") of MBC Grand Broadcasting, Inc. ("MBC Grand"), by which the company seeks consent to assignment of the license of broadcast station KSTR-FM, Montrose, Colorado, from Leggett Broadcasting, Inc. ("Leggett"). We also have before us the September 30, 2004, Petition to Deny (the "Petition") filed by Western Slope Communications, LLC ("Western Slope") and related pleadings.¹ After reviewing the record, we find that the proposed transaction is consistent with the public interest. Accordingly, we deny the Petition and grant the Application.

¹ MBC Grand filed an Opposition to Petition to Deny on October 15, 2004. Western Slope filed a Reply on November 1, 2004. MBC Grand filed a Supplement to Opposition to Petition to Deny on January 7, 2005.

Mr. Roberto Salazar ("Salazar") also submitted a letter dated April 14, 2005, opposing the transaction (the "Salazar Letter"). Petitions to deny the Application were due on October 1, 2004. 47 C.F.R. § 73.3584(a). The Salazar Letter thus fails to meet the requirements of a petition to deny. In addition, as of the release of this decision the staff has not received a copy through official Commission channels and learned of it only through MBC Grand's counsel. Nonetheless, we will treat the Salazar Letter as an informal objection, pursuant to Section 73.3587 of the Commission's rules. 47 C.F.R. § 73.3587.

MBC Grand is the licensee of AM broadcast stations KNZZ and KTMM, Grand Junction, Colorado, and FM broadcast stations KJYE, KMGJ, and KMOZ-FM, Grand Junction, Colorado.² All five stations are listed by BIA as “home” to Arbitron’s Grand Junction, Colorado Metro Survey Area (the “Grand Junction Metro”), as is KSTR-FM.

Leggett and MBC Grand filed the Application during the period in which the United States Court of Appeals for the Third Circuit (the “Third Circuit”) had stayed the effectiveness of the new local radio ownership rule adopted by the Commission on June 2, 2003.³ The public notice announcing the acceptance for filing of the Application invited comment on the level of concentration in the Grand Junction Metro.⁴

Western Slope responded to this notice, asserting in its Petition that MBC Grand’s acquisition of KSTR-FM would contravene Section 310(d) of the Communications Act of 1934, as amended, by further consolidating an already highly concentrated market.⁵ Salazar likewise opposes the transaction on grounds of market concentration.⁶ Western Slope further alleges that stations licensed to United Ministries should be attributed to MBC Grand. In support, it points to the original terms for financing the sale of KDTA to United Ministries,⁷ the collocation of technical facilities of MBC Grand and United Ministries stations, and the presence of certain links between the companies’ websites as evidence of a less than arms-length relationship that, it contends, would result in a violation of the Commission’s local radio ownership rule.⁸

In response to the Commission’s petition for rehearing of the *Prometheus Remand Order*, on September 3, 2004, the Third Circuit partially lifted its stay such that the new local radio ownership rule, as set forth in the *Ownership Report and Order*, took effect, including use of the Arbitron-based market definition where Arbitron data (as reported by BIA) are available.⁹ In the *Ownership Report and Order*, the Commission stated that “[b]y applying the numerical limits of the local radio ownership rule to a more rational market definition, we believe that, *in virtually all cases*, the rule will protect against excessive concentration levels in local radio markets that might otherwise threaten the public interest.”¹⁰ Western Slope and Salazar cite no evidence, nor do we find any, to suggest that the new radio ownership rule is inadequate in this case to protect against competitive harm. Accordingly, we analyze this transaction using the Grand Junction Metro as the relevant radio market.

² At the time it filed the Application, MBC Grand was also the licensee of AM broadcast station KDTA, Delta, Colorado. It has since assigned the station’s license to United Ministries, pursuant to the Commission consent granted in File No. BAL-20040813AAR. Our records indicate that the parties consummated the KDTA assignment on November 16, 2004.

³ See 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620 (2003) (“Ownership Report and Order”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004) (“Prometheus Remand Order”), *stay modified on reh’g*, No. 03-3388 (3d Cir. Sept. 3, 2004) (“Prometheus Rehearing Order”).

⁴ See Public Notice, “Broadcast Applications,” Report No. 25811 (rel. Sept. 1, 2004).

⁵ Petition at 5-7.

⁶ Salazar Letter at 2.

⁷ See *supra* note 2.

⁸ Petition at 3-5.

⁹ *Prometheus Rehearing Order*, *supra* note 3.

¹⁰ *Ownership Report and Order*, 18 FCC Rcd at 13813 (emphasis added).

BIA reports 21 commercial and noncommercial educational radio stations as “home” to the Grand Junction Metro. Thus, a single entity may own up to six stations, no more than four of which are in the same service.¹¹ Staff analysis confirms that, upon consummation of the proposed transaction, MBC Grand will control four FM and two AM stations in compliance with the Commission’s rules.

We also find that Western Slope’s remaining allegations are without merit. They neither articulate any ground for attributing to MBC Grand stations licensed to United Ministries, nor call into question United Ministries’ ultimate control over its stations’ personnel, programming, and finances.¹² Although, as Western Slope notes, United Ministries originally planned to finance its acquisition of KDTA in part by executing a promissory note for approximately 37.5% of the purchase price in favor of MBC Grand, the amended Asset Purchase Agreement provided that the entire purchase price be paid in cash at closing, eliminating any debtor-creditor relationship between the companies.¹³ As for the collocation of MBC Grand and United Ministries stations, the Commission has long recognized the sharing of technical facilities as generally beneficial.¹⁴ Finally, we find wholly unpersuasive Western Slope’s contention that certain minimal website links between the companies evidence an improper relationship.¹⁵

Based on the evidence presented in the record and available through the BIA database, we find that Western Slope has not raised a substantial and material question of fact warranting further inquiry. We further find that MBC Grand is qualified as the assignee and that grant of the Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Western Slope Communications, LLC and the informal objection filed by Mr. Roberto Salazar ARE DENIED. IT IS FURTHER ORDERED, that the application to assign the license of station KSTR-FM, Montrose, Colorado (File No. BALH-20040715ABL) from Leggett Broadcasting, Inc. to MBC Grand Broadcasting, Inc. IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Mr. Roberto Salazar

¹¹ 47 C.F.R. § 73.3555(a).

¹² See, e.g., *WGPR, Inc.*, 10 FCC Rcd 8140 (1995).

¹³ Opposition at 9-11 and Exhibit D (Declaration of Ken Andrews, Vice President of United Ministries).

¹⁴ See *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755, 2787 (1992) (subsequent history omitted).

¹⁵ See *Secret Communications II, LLC*, 18 FCC Rcd 9139, 9149 (2003) (recommending attentiveness to “website depictions” but declaring “speculative” claims that links between the websites of a licensee’s stations and the websites of stations for which the licensee sold advertising time pursuant to a Joint Sales Agreement (“JSA”) evidenced an abdication of control by the licensee of the JSA stations).